

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

FLORIDA TRUCKING CO., INC.,
FLORIDA EQUIPMENT CO., LLC
KEARNEY CONSTRUCTION CO., LLC
KEARNEY CONSTRUCTION CO., INC.,
AVT EQUIPMENT, LLC

Debtors.

Chapter 11

Case No. 8:09-bk-11791-CED
8:09-bk-11792-CED
8:09-bk-18848-CED
8:09-bk-18851-CED
8:09-bk-18861-CED

(Jointly Administered)

LARRY S. HYMAN, as Trustee for
KEARNEY CONSTRUCTION CO., LLC,

Plaintiff,

vs.

Adversary No. _____

SUN COUNTRY MATERIALS, LLC, a
Delaware limited liability company; and
WASTE SERVICES, INC., a Delaware
corporation

Defendants.

**TRUSTEE'S COMPLAINT TO AVOID AND RECOVER PREFERENCE
PAYMENT AGAINST SUN COUNTRY MATERIALS, LLC
AND WASTE SERVICES, INC.**

Larry S. Hyman, the duly appointed Chapter 11 Trustee (the "Trustee") in the above-styled cases, sues Sun Country Materials, LLC and Waste Services, Inc. (collectively the "Defendants"), and alleges as follows:

1. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), and (O).
3. Venue for this proceeding is proper in this district pursuant to 28 U.S.C. § 1409(a).
4. On June 4, 2009 (the "Petition Date"), the Florida Trucking Co., Inc. filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code 11 U.S.C. § 101, et. seq. (the "Bankruptcy Code"). On August 26, 2009, Kearney Construction Company, LLC ("Kearney LLC"); Kearney Construction Company, Inc.; and AVT Equipment, LLC, also filed voluntary petitions for relief under chapter 11. The chapter 11 cases (the collectively, the "Cases") are jointly administered in this Court under Case No. 8:09-bk-11791-CED.
5. On February 1, 2010, the Bankruptcy Court entered its Order Approving Appointment of Chapter 11 Trustee (the "Appointment Order") (Docket No. 491).
6. Pursuant to the Appointment Order and applicable law, the Trustee has standing and authority to initiate and prosecute this adversary proceeding.
7. This is an action to recover a preference under section 547 of the Bankruptcy Code.
8. Kearney LLC made a number of transfers (the "Transfers") to the Defendants. The list of Transfers are attached as Exhibit "A."
9. Checks of Kearney LLC evidencing the Transfers are attached as composite Exhibit "B."
10. Defendants were a creditor of Kearney LLC at the time the Transfers were made.
11. The Transfers constitute a transfer of an interest of Kearney LLC in property.
12. The Transfers were to or for the benefit of a creditor, i.e. the Defendants.
13. The Transfers were made for or on account of antecedent debts owed by Kearney LLC to the Defendants.
14. The Transfers were made while Kearney LLC was insolvent.

15. The Transfers were made on or within 90 days before the Petition Date.
16. The Transfers enabled the Defendants to receive more than it would have received if:
 - (a) the case was a case under chapter 7 of the Bankruptcy Code;
 - (b) the Transfers had not been made; and
 - (c) the Defendants received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Defendants in the amount of \$55,092.50, together with interest and costs, and providing for such other and further relief as is appropriate.

/s/ Victoria D. Critchlow

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Attorneys for Trustee

Date Cleared	Method of Transfer	To The Order Of	Amount
6/12/2009	8944	Sun Country Materials	12,023.00
7/24/2009	Cashier's Check	Sun Country Materials	43,069.50
		Sun Country Materials Total	\$ 55,092.50

EXHIBIT A

PLATINUM EB Bank 3631 802 WEST LUMSDEN ROAD BRANDON FLORIDA 33511		OFFICIAL CHECK	4214355482
PAY THE SUN43069		DATE July 27, 2009	
TO THE ORDER OF ***SunCountry Material***		***\$43,069.50***	
PAYABLE THROUGH rem: Kearney Const. Co., LLC			
THE BANK OF NEW YORK MELLON EVERETT, VA			
⑆0⑆1⑆007092⑆00421 43554827⑆ ⑆0004306950⑆			

11 31 09
BANK OF AMERICA/JIA TPA
M0110300334 E7946 94 P95
07/31/09
5050448003

1018 68252

PAY TO THE ORDER OF
BANK OF AMERICA
FOR DEPOSIT ONLY
WASTE SERVICES, INC.
LOC #0137-PWELLAS COLLECTION
ACCOUNT 888315182